



DEPARTMENT OF HOMELAND SECURITY

United States Coast Guard

33 CFR Part 165

Docket No. USCG-2012-1088

RIN 1625-AA00

Safety Zone; MODU KULLUK; Sitkalidak Island to Kiliuda Bay,  
Alaska

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters, from surface to seabed, around the MODU KULLUK currently located near Ocean Bay, Sitkalidak Island, Alaska with anticipated movement into Kiliuda Bay, Alaska. The temporary safety zone will encompass the navigable waters within a one nautical mile radius of the MODU KULLUK while it is aground near Sitkalidak Island and will decrease to encompass the navigable waters within 500 yards of the MODU KULLUK while it is being towed through and anchored within Kiliuda Bay. The

purpose of the safety zones is to protect persons and vessels from the inherent dangers of salvage, towing and recovery operations of the MODU KULLUK. This safety zone in effect continues the temporary safety zone that was established immediately following the MODU KULLUK grounding and provides a longer effective period in anticipation of extended salvage efforts and eventual tow to another location.

DATES: This rule is effective with actual notice from January 6, 2013 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Federal Register from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 31, 2013.

ADDRESSES: : Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-0668 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-1088 in the "Search" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR John Cashman, U.S. Coast Guard, Seventeenth Coast Guard District; telephone 907-463-2058, john.d.cashman@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that

good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The MODU KULLUK grounded during severe weather in the vicinity of Sitkalidak Island and response, recovery and salvage efforts began immediately. A temporary final rule (USCG-2011-0668) was issued on January 2, 2013 creating a safety zone one nautical mile around the MODU KULLUK. This new temporary final rule is established to cover the anticipated time necessary for salvage operations, the towing of MODU KULLUK to Kiliuda Bay and the operations necessary to assess and repair the vessel.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because immediate action is needed to minimize potential danger to the public during the period of time when there will be unusually high vessel traffic engaged in conducting the salvage operations in the vicinity of Ocean Bay, Sitkalidak Island, Alaska and during the tow and recovery of MODU KULLUK in Kiliuda Bay.

#### B. Basis and Purpose

The MODU KULLUK unexpectedly grounded during severe weather in the vicinity of Sitkalidak Island, Alaska, precipitating a salvage and recovery operation. The Coast Guard believes a safety zone is needed based on the significant number of persons, vessels and activities necessary to conduct salvage of the MODU KULLUK, a non-self-propelled vessel. The salvage operations are expected to involve a large number of vessels, including tow vessels, pollution response vessels and dive vessels. The salvage, tow and recovery operations including towing and anchoring the vessel, assessment and repair is anticipated to take up to 90 days.

A temporary safety zone is needed to ensure vessels engaged in the salvage operation are able to maneuver unimpeded in the vicinity of the MODU KULLUK and to keep other mariners a safe distance from heavy equipment, large vessels, cables, divers and other activities involved in the salvage operations occurring in the vicinity of Ocean Bay and Partition Cove on the South side of Sitkalidak Island near Kodiak Island, Alaska and during the towing, anchoring, assessment and repairs of the MODU KULLUK that will take place within the navigable waters of Kiliuda Bay.

### C. Discussion of Final Rule

For the reasons stated above, the Coast Guard is establishing a safety zone in the navigable waters, from surface to seabed, within a one nautical mile radius of the MODU KULLUK while it is aground near Ocean Bay, Sitkalidak Island, and for all navigable waters, from surface to seabed, within 500 yards of the MODU KULLUK at all other times once it is floating free from the seabed, from January 6, 2013 through March 31, 2013. If the salvage and recovery operations are completed, and the safety zone is determined to be no longer necessary, enforcement of the zone will end prior to March 31, 2013.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order

13563. The Office of Management and Budget has not reviewed it under those Orders.

The rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the vicinity of Sitkalidak Island and Kiliuda Bay during the winter months and it will be enforced for a short duration. The proposed safety zone is designed to allow vessels transiting through the area to safely travel around the MODU KULLUK salvage operation, towing and recovery areas without incurring additional cost or delay.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities:

the owners or operators of vessels intending to transit through or anchor in the vicinity of Ocean Bay, Sitkalidak Island or within Kiliuda Bay in the vicinity of the MODU KULLUK from January 6, 2013 to March 31, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be effective for a short period of time, enforcement will end once the salvage operations are completed and the zone is limited to the waters within one nautical mile of the MODU KULLUK while aground and within 500 yards of the MODU KULLUK while it is towed or at anchor within Kiliuda Bay. Minimal use of the waterway is expected due to the winter weather conditions.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.



Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for the collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution

of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing regulations for a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a

Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

2. Add § 165.T17-1088 to read as follows:

§ 165.T17-1088 Safety Zone; MODU KULLUK, Ocean Bay, Sitkalidak Island and Shelikof Strait, Alaska.

(a) Location. The following areas are safety zones:

All navigable waters, from the surface to the seabed, within one nautical mile of the MODU KULLUK, a large ocean-going drill vessel, while it is aground in the vicinity of Ocean Bay and Partition Cove, Sitkalidak Island, Alaska, in approximate position 57 degrees, 05.4'N; 153 degrees, 06.1'W and all navigable waters, from surface to seabed, within 500 yards of the MODU KULLUK, once it is floating free from the seabed including times that it is under tow and at anchor in the vicinity of Kodiak Island and Kiliuda Bay, Alaska.

(b) Effective date. The safety zone is effective beginning January 6, 2013, and terminates at 11:59 pm on March 31, 2013. Enforcement of this safety zone may end earlier if ordered by the Captain of the Port, Western Alaska.

(c) Regulations. The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the areas described in paragraph (a). In addition to the general regulations, the following provisions apply to this safety zone:

(1) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the

operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(2) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(3) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(4) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force including notification that the MODU KULLUK is free from the ocean bottom and the subsequent reduction in size of the safety zone by providing notice in accordance with 33 CFR 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: January 6, 2013

P. Mehler III,  
Captain, U.S. Coast Guard  
Captain of the Port, Western Alaska

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